

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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| THE OHIO CAS. GROUP OF | : | CIVIL ACTION |
| INS. COMPANIES | : | |
| | : | |
| Plaintiff, | : | |
| v. | : | NO. 01-7257 |
| | : | |
| DUANE WERLEY | : | |
| | : | |
| Defendant. | : | |

MEMORANDUM

Baylson, J.

September 24, 2002

The Ohio Casualty Group of Insurance Companies (“Plaintiff”) brought a declaratory judgment action against Duane Werley (“Defendant”) on December 31, 2001 requesting that the Court: (1) declare that the insurance coverage provided by Plaintiff to Ralph W. Werley, Defendant’s father, does not to apply to provide underinsured motorist coverage for Defendant’s claims asserted against the policy; and (2) enter judgment in favor of Plaintiff declaring that Plaintiff has no obligation to provide underinsured motorist benefits to Defendant in conjunction with his claim against Plaintiff for said benefits. Defendant has moved for Judgment on the Pleadings, which will be granted.

I. Legal Standard

When considering a Motion for Judgment on the Pleadings pursuant to Federal Rule of Civil Procedure 12(c), the Court must consider as true any well-pleaded factual allegations in the pleadings, must draw any permissible inferences from those facts in the non-moving party’s favor, and may grant defendant’s motion for judgment on the pleadings only when the plaintiff

has alleged no set of facts that, if subsequently proved, would entitle the plaintiff to relief.

DeBraun v. Meissner, 958 F. Supp. 227, 229 (E.D. Pa. 1997) (citing Hishon v. King & Spalding, 467 U.S. 69, 73, 104 S. Ct. 2229, 81 L. Ed. 2d 59 (1984)).

II. Facts

The following facts are the material facts and are not in dispute: Defendant was operating his motorcycle when he was struck by a motor vehicle on August 26, 2002. The motor vehicle that struck Defendant was insured by Plaintiff, which paid the policy limit of \$100,000 to Defendant. Defendant received \$15,000 in underinsured motorist coverage on the motorcycle he was operating at the time of the accident and \$15,000 in underinsured motorist coverage on an automobile that he owned. Defendant also sought to recover underinsured motorist coverage provided by a policy issued by Plaintiff to his father, Ralph W. Werley, with whom he resided at the time of the accident. Defendant demanded arbitration under his father's policy and designated an arbitrator to sit on an arbitration panel to decide the case. Plaintiff denied its obligation to pay underinsured motorist coverage, relying on the household exclusion, refused to participate in arbitration, and filed the instant action.

III. Discussion

In his Motion for Judgment on the Pleadings, Defendant requests that the Court dismiss Plaintiff's declaratory judgment action and order the parties to proceed with arbitration in accordance with the arbitration clause in the underinsured motorist coverage section of his father's policy (the "Arbitration Clause"). (Mem. Supp. Mot. J. Pleadings at 4.) Plaintiff argues that Defendant's Motion should be denied for the following reasons: (1) the coverage dispute between the parties does not fall within the Arbitration Clause; (2) Defendant's reliance on

Borgia v. Prudential Ins. Co., 750 A.2d 843 (Pa. 2000), and Brennan v. Gen. Accident Fire & Life Assurance Corp., 574 A.2d 580 (Pa. 1990), are inapposite because the underinsured motorist arbitration provisions involved in those cases called for the application of common law arbitration principles while the Arbitration Clause refers to a Pennsylvania statute and thus calls for the application of statutory arbitration principles; and (3) the issue of whether the Defendant is precluded from recovering underinsured motorist benefits pursuant to the household exclusion should be decided by the Court because it can only be determined by assessing the validity of the household exclusion, which is a question of public policy. (Mem. Opp’n Mot. J. Pleadings at 3-5.)

A. The Coverage Dispute Falls within the Arbitration Clause

The Arbitration Clause provides, in relevant part:

A. If we and an “insured” do not agree:

1. Whether that “insured” is legally entitled to recover damages; or
2. As to the amount of damages which are recoverable by that “insured”;

From the owner or operator of an “underinsured motor vehicle” then the matter may be arbitrated.

Either party may make a demand for arbitration. Arbitration shall be conducted in accordance with the provisions of the Pennsylvania Uniform Arbitration Act of 1927.

Under Pennsylvania law, the determination of whether an issue must be submitted to arbitration depends upon: (1) whether the parties entered into a agreement to arbitrate, and (2) whether the dispute falls within the scope of that agreement. State Farm Mut. Auto. Ins. Co. v. Coviello, 233 F.3d 710, 716 (3d Cir. 2000). In addition, the scope of arbitration “is determined by the intention of the parties as ascertained in accordance with the rules governing contracts

generally.” Id. (quoting Sley Sys. Garages v. Transp. Workers Union of Am., 178 A.2d 560, 561-62 (Pa. 1962)).

It is well settled that when interpreting a contract, the Pennsylvania courts look to the words of the agreement in order to determine the parties’ intent. Id. at 717 (citations omitted). Moreover, when construing an insurance contract, courts are bound to give effect to clear and unambiguous language and courts are not at liberty to rewrite an insurance contract, or to construe clear and unambiguous language to mean something other than what it says. Id. (citations omitted).

The Pennsylvania Supreme Court has instructed that arbitration clauses should be construed broadly because public policy favors arbitration. Hartford Ins. Co. of the Midwest v. Altomare, No. CIV.A.02-2134, 2002 U.S. Dist. LEXIS 15087, at *6 (E.D. Pa. Aug. 7, 2002) (citing Borgia, 750 A.2d at 850). The Pennsylvania Supreme Court has broadly construed underinsured motorist arbitration provisions when the provisions themselves have contained no express limitations on their scope. See Coviello, 233 F.3d at 718; see also Brennan, 574 A.2d at 583; Nat’l Grange Mut. Ins. Co. v. Kuhn, 236 A.2d 758 (Pa. 1968) (Pennsylvania Supreme Court construed an arbitration provision virtually identical to the one in Brennan to encompass policy coverage dispute between the parties).

In Brennan, the opinion described the underinsured motorist arbitration provision as follows: “If we and the insured disagree whether that person is legally entitled to recover damages from the owners or operator of an underinsured motor vehicle, or do not agree as to the amount of damages, either party may make a written demand for arbitration.” 574 A.2d at 582. The Pennsylvania Supreme Court held that because the underinsured motorist arbitration

provision did not limit the jurisdiction of the arbitrators over what issues may be submitted, the dispute between the parties was a matter specifically within the scope of the arbitration clause.

Id. at 583.

In Borgia, which is substantially similar to the instant action, Borgia was involved in an automobile accident and filed a claim for underinsured motorist coverage under a separate automobile insurance policy issued by Prudential Insurance Company (“Prudential”) to his parents with whom he resided. 750 A.2d at 844. The opinion described the underinsured motorist arbitration provision in the Prudential policy, which was issued to Borgia’s parents, as stating “if [Prudential] and a covered person disagree on policy coverages or amounts payable, either party may make a written demand for arbitration.” Id. at 845. Prudential denied Borgia’s claim on the grounds that Borgia was not a named insured and his car was not a covered vehicle. Id. at 844. The Pennsylvania Supreme Court held that whether Borgia was a “covered person” within the meaning of the policy who was entitled to demand arbitration was an issue to be decided by arbitration. Id. at 850.

Plaintiff relies on Coviello, in which the Third Circuit, however, refused to order arbitration and distinguished Brennan and Borgia. Coviello was injured in a single-vehicle accident and filed a claim for underinsured motorist coverage under a separate automobile insurance policy issued by State Farm Mutual Automobile Insurance Company (“State Farm”) to her daughter with whom she resided. 233 F.3d at 711-12. State Farm denied Coviello’s claim on the basis that the family vehicle exclusion applied and barred her claim for underinsured motorist benefits. Id. at 712. The opinion described the underinsured motorist arbitration provision as follows:

Two questions must be decided by agreement between the insured and [State Farm]:

- (1) Is the insured legally entitled to collect compensatory damages from the owner or driver of an uninsured motor vehicle or underinsured motor vehicle; and
- (2) If so, in what amount?

If there is no agreement, these two questions shall be decided by arbitration at the request of the insured or [State Farm]. *The arbitrator's decision shall be limited to these two questions.*

Id. at 717 (emphasis added).

The Third Circuit distinguished Coviello from Brennan and Borgia because in these cases the underinsured motorist arbitration provisions contained no express limitation on their scope, but the arbitration clause in Coviello did contain an express limitation on its scope, and did not include the issue of coverage. Id. at 718-19. The Third Circuit, therefore, held that the parties' coverage dispute was not to be arbitrated.¹ Id. at 719.

¹ In its opinion, the Third Circuit noted that although the limiting language in the arbitration provision formed the basis for its conclusion that the parties' coverage dispute was not arbitrable, the Pennsylvania Supreme Court appears to have retreated somewhat from its suggestion in Brennan that all disputes are arbitrable if the arbitration provision does not contain limiting language. Coviello, 233 F.3d at 720 n.10. The Third Circuit stated:

In Borgia, the Pennsylvania Supreme Court noted that the arbitration provision at issue in Baverso v. State Farm Ins. Co., 407 Pa. Super. 164, 595 A.2d 176 (Pa. Super. Ct. 1991), which was virtually identical to the one in Brennan, "arguably. . . limits the scope of arbitration to issues arising under from the claimant's underlying tort actions against the owner or operator of the other vehicle,' and would not encompass policy coverage issues. Borgia, 750 A.2d at 850 n.10.

Id. The Borgia court distinguished the language of the underinsured motorist arbitration clause in Baverso from the underinsured motorist arbitration clause in its case, which utilized the broader, less specific term "policy coverages" to define the scope of arbitration. Borgia, 750 A.2d at 850 n.10. The Borgia court held that the phrase "policy coverages" was "fairly read to encompass the claimant's asserted status as a 'covered person.'" Id. The Borgia court, however, declined to decide on the issue of whether the underinsured motorist arbitration clause in Baverso encompassed policy coverage issues, noting that "[w]hether the Superior Court in Baverso improperly extended this Court's holding Brennan is a question that is not before [the Court] in

Decisions within the Third Circuit after Coviello have continued to follow the Brennan rule that all disputes are arbitrable if the arbitration provision does not contain limiting language. In York Ins. Co. v. Hill, No. CIV.A.00-3931, 2001 U.S. Dist. LEXIS 9770 (E.D. Pa. July 10, 2001), Judge Buckwalter was presented with the issue of whether the parties' coverage dispute fell within the scope of the relevant policy's arbitration provision. The underinsured motorist arbitration provision in Hill provided, in relevant part, "If [York] and an 'insured' disagree whether the 'insured' is legally entitled to recover damages from the owner or driver of an 'underinsured motor vehicle' or do not agree as to the amount of damages that are recoverable by that 'insured,' then the matter may be arbitrated." Hill, 2002 U.S. Dist. LEXIS 9770, at *5. After referring to footnote 10 of the Third Circuit's decision in Coviello, Judge Buckwalter still held that the issue of whether the defendants were insureds should be settled in arbitration "[b]ecause of the absence of the limiting clause relied upon in Coviello, and consistent with the current state of Pennsylvania common law." Id. at *5-6.

In The Hartford Ins. Co. of the Midwest v. Green, No. CIV.A.01-2123, 2002 U.S. App. LEXIS 7137 (3d Cir. Apr. 18, 2002), which was also decided after Coviello, the Third Circuit affirmed Judge Robreno's holding under the Brennan rule that the uninsured motorist coverage at issue was an issue for arbitration because the language in the uninsured motorist arbitration provision of the insurance policy, which was similar to the underinsured motorist arbitration provisions in Brennan, Baverso and Hill, did not explicitly exclude uninsured motorist coverage issues from arbitration. See 2002 U.S. App. LEXIS 7137, at *5.

The Arbitration Clause, which is substantially the same as the underinsured motorist

this case." Id.

arbitration provisions in Brennan, Baverso and Hill and the uninsured motorist arbitration provision in Green, does not contain any limitation on its scope. In applying the Brennan rule, and notwithstanding the Third Circuit's cautionary note in Coviello, this Court holds that the insurance coverage dispute does fall within the Arbitration Clause and should, therefore, be settled in arbitration.

B. Statutory Arbitration Requires Application of the Same Principles as Common Law Arbitration

Arbitration under the Arbitration Clause is statutory arbitration because the Arbitration Clause specifically provides for the application of the Pennsylvania Uniform Arbitration Act, 42 PA. CONS. STAT. § 7302, et seq. (2002). Although the underinsured motorist arbitration provisions in Borgia and Brennan called for the application of common law arbitration principles, there is no support for Plaintiff's argument that the analysis in determining whether the parties' insurance coverage dispute falls within the Arbitration Clause should be different where statutory arbitration principles apply.

C. The Household Exclusion Does Not Preclude Arbitration

Plaintiff argues that the validity of the household exclusion precludes arbitration. However, because there is nothing in the insurance policy to preclude the applicability of the household exclusion being considered within the Arbitration Clause, and because Plaintiff cites no authority for its position, Plaintiff's contentions must be rejected. Plaintiff then seeks refuge in Defendant's reserving his opposition to the enforceability of the household exclusion as contrary to public policy. However, in view of the broad Arbitration Clause in this insurance policy, this Court sees no reason to decide the difficult, but in this case abstract, issue of public

policy. Accord Coviello, 233 F.3d at 714, 717.

IV. Conclusion

For the foregoing reasons, Defendant's Motion for Judgment on the Pleadings will be granted.

An appropriate Order follows.

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| | : | |
| | : | |
| Defendant. | : | |

ORDER

AND NOW, this 24th day of September, 2002, it is hereby ORDERED that the Defendant's Motion for Judgment on the Pleadings is GRANTED, and Judgment shall be entered in favor of Defendant and against Plaintiff. The parties are ordered to proceed with arbitration in accordance with the arbitration clause of the underinsured motorist coverage section of the insurance policy.

BY THE COURT:

MICHAEL M. BAYLSON, U.S.D.J.